

1
2
3
4
5
6
7 BEFORE THE OFFICE OF THE INSURANCE COMMISSIONER
8 OF THE STATE OF WASHINGTON
9

10 In The Matter Of The Application Regarding
11 The Conversion And Acquisition Of Control
12 Of Premera Blue Cross And Its Affiliates
13
14
15

No. G02-45

PREMERA'S **AMENDED** FIRST SET
OF REQUESTS FOR PRODUCTION
OF DOCUMENTS TO THE PREMERA
WATCH COALITION AND
PREMERA WATCH COALITION
OBJECTIONS AND RESPONSES
THERETO

16 TO: The Premera Watch Coalition, an Intervenor Group herein

17 AND TO: Its lead attorneys, Eleanor Hamburger and Columbia Legal Services
18

19 PREMERA and Premera Blue Cross ("Premera") hereby propound the
20 following Requests for Production of Documents to the Premera Watch Coalition, an
21 Intervenor Group herein.

22 The requested documents should be produced for inspection and copying
23 within 30 days after the date of service at the offices of Preston Gates & Ellis LLP, 925
24 Fourth Avenue, Suite 2900, Seattle, Washington 98104, or at such other location as may
25 be determined by agreement with counsel. You should respond to each discovery
26 request in accordance with the instructions and definitions set forth below. The

PREMERA'S **AMENDED** FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS
TO THE PREMERA WATCH COALITION AND
OBJECTIONS AND RESPONSES THERETO - 1

SIRIANNI YOUTZ
MEIER & SPOONEMORE
719 SECOND AVENUE, SUITE 1100
SEATTLE, WASHINGTON 98104
TEL. (206) 223-0303 FAX (206) 223-0246

1 requests for production of documents are continuing in nature within the meaning of
2 CR 26.

3 **INSTRUCTIONS**

4 A. If any document is withheld from production on the ground that
5 its production is privileged due to the attorney-client privilege, work-product rule, or
6 other legally recognized privilege preventing its disclosure to a requesting party,
7 please state separately for each such document: (1) the applicable privilege pursuant to
8 which You claim protection; (2) the date of the document; (3) the nature of the
9 document (e.g., letter); (4) the full name, job title, and employer for each author of the
10 document; (5) the full name, job title, and employer of each addressee and named
11 recipient of the document; (6) the full name, job title, and employer of each person
12 who, to Your knowledge, has seen the document; and (7) in general, the substance of
13 the document.
14

15 B. In responding to these requests for production, You should
16 provide all documents that are available to You, including all documents that may be
17 in the possession of any person for whom You have authority to act in this proceeding,
18 as well as of Your agents, attorneys, or other persons who are acting under Your
19 direction or on Your behalf or are otherwise subject to Your control.

20 C. In responding to these requests for production, You should make a
21 diligent search of Your records and of other papers and materials in Your possession or
22 available to you. Likewise, You should make a diligent search of the records, papers,
23 and materials in the possession of any person on behalf of whom You claim to have
24 authority to act in this proceeding.
25
26

1 D. Unless the context clearly indicates otherwise, the following terms
2 and phrases will be defined and used herein as follows:

3 **DEFINITIONS**
4

5 1. The terms "You" and "Your" mean and include the Premera Watch
6 Coalition, an Intervenor Group herein, and the member organizations thereof and their
7 respective staffs, employees, consultants, attorneys, experts, agents, investigators,
8 officers and directors.

9 2. The terms "the Conversion Application" and the term "the
10 Conversion Hearing" refer to the matter pending before the Washington State Office of
11 the Insurance Commissioner, denominated "In the Matter of the Application for
12 Conversion of Premera Blue Cross," Docket No. G02-45, and the hearing thereon. The
13 term "Conversion Forums" refer to the public hearings that the Insurance
14 Commissioner has planned for December 2003.
15

16 3. The term "Intervenor" means any of the petitioning intervenors
17 identified in the February 10, 2003 "Fourth Order: Ruling on Motions to Intervene" of
18 the Insurance Commissioner and the term "Intervenor Groups" means the Intervenor
19 Groups identified in said Order.

20 4. The terms "person" and "persons" mean and include all individuals
21 and all entities of any description, including but not limited to all associations,
22 companies, sole proprietorships, partnerships, joint ventures, corporations, trusts and
23 estates, subsidiaries, and parents, as well as all individuals employed or retained by
24 any of the foregoing.
25
26

1 5. The terms "document" and "documents" mean and include any
2 kind of written, typewritten, or printed material whatsoever, any kind of graphic
3 material, and any computer readable media including, but not limited to, e-mails,
4 papers, agreements, contracts, notes, applications, memoranda, correspondence,
5 studies, working papers, letters, telegrams, invoices, personal diaries, reports, records,
6 books, forms, indexes, transcriptions and recordings, magnetic tapes, video tapes, wire
7 recordings, disks and printed cards, data sheets, data processing cards, personal
8 calendars, interoffice memoranda, minutes and records of any sorts of meetings,
9 financial statements, financial calculations, estimates, reports of telephone or other oral
10 conversations, appointment books, maps, drawings, charts, graphs, photographs, and
11 all other writings and recordings of every kind, however produced or reproduced,
12 whether signed or unsigned. The terms "document" and "documents" include, but
13 without limitation, originals and all file copies and other copies that are not identical to
14 the original no matter how or by whom prepared, and all drafts prepared in connection
15 with any documents, whether used or not. If the original of any document is not in
16 Your possession, custody or control, a copy of that document should be produced.

17 6. The phrases "relating to" or "regarding" mean consisting of,
18 summarizing, describing, reflecting, or referring to in any way.
19

20 7. The singular shall include the plural, the use of the masculine
21 gender shall include the feminine gender, and vice versa, whenever the context
22 reasonably allows or requires such construction. "And" and "or" mean "and/or"
23 whenever the context reasonably allows such construction.
24
25
26

1
2 DATED this ____ day of October, 2003.
3

4 PRESTON GATES & ELLIS LLP
5

6 By _____
7 Thomas E. Kelly, Jr., WSBA # 05690
8 Robert B. Mitchell, WSBA # 10874
9 Attorneys for PREMERA and
10 Premera Blue Cross
11

12 **REQUESTS FOR PRODUCTION**
13

14 **General Objections**
15

16 1. The Premera Watch Coalition objects to all of these requests for
17 production to the extent that they call for documents that are protected by the attorney-
18 client privilege, work product doctrine or other applicable privilege or protection.
19 Nothing in the Premera Watch Coalition's response should be construed to waive these
20 objections. The Premera Watch Coalition will provide its response, along with a
21 privilege log by November 20, 2003.
22

23 2. The Premera Watch Coalition also objects to Premera's First
24 Amended Request for Production of Documents to the extent that it may require the
25 Premera Watch Coalition to conduct a search and provide responses beyond the
26 requirements of CR 26 and 34. The Premera Watch Coalition objects to the definition of
"you" and "your" used by Premera, to the extent that it would require the Premera
Watch Coalition to obtain information from individuals over whom the Premera Watch
Coalition has no control.

1 3. The Premera Watch Coalition reserves the right to supplement,
2 amend, clarify or alter its Objections and responses as its ongoing investigation in
3 response to Premera's First Amended Request for Production of Documents continues.

4 **REQUEST FOR PRODUCTION NO. 1:**

5 For each person whom You expect to call to testify as a consultant or as
6 an expert witness, for whom You will be submitting pre-filed testimony, or whose
7 opinions you otherwise intend to present or rely upon for the Conversion Hearing or
8 the Conversion Forums or for Your position regarding the Conversion Application
9 (hereinafter, an "Expert" or "Your Expert(s)"), please produce (a) a current resume or
10 curriculum vitae, (b) a copy of all engagement letters or memoranda regarding the
11 Expert's engagement; (c) a statement of the compensation paid and to be paid to the
12 Expert or his company; (d) all publications authored by the Expert from January 1, 1990
13 to the date of response to this Request (hereinafter, "to present"); (e) a list of all matters
14 in which the Expert has, during the time period from January 1, 1999 to present, either
15 prepared an expert report or testified as an expert (i.e., testified by way of declaration,
16 pre-filed testimony, deposition or live testimony, at any hearing, trial or other
17 proceeding); (f) a copy of all reports, pre-filed testimony, and declarations of the Expert
18 from January 1, 1999 to present; and (g) a copy of the transcripts of all depositions and
19 testimony of the Expert from January 1, 1999 to present.

20 **RESPONSE:**

21
22 Without waiving any objections, the Premera Watch Coalition
23 Interveners have provided responsive documents. Mr. Aaron Katz is the Premera
24 Watch Coalition's sole expert. From January 1, 1999 to the present, Mr. Katz has not
25 prepared an expert report nor testified as an expert. On one occasion, at the request of
26 several Washington State legislators, Mr. Katz submitted a letter as part of a Certificate

1 of Need proceeding. That letter will be provided. Mr. Katz has not provided testimony
2 or been deposed during the time period. No document that is protected under the
3 attorney-client or work product privilege is being provided, as we assert privilege for
4 those documents.

5 **REQUEST FOR PRODUCTION NO. 2:**

6
7 Please produce all final reports, surveys, memo or other papers prepared
8 by, or under the supervision of, each person whom You expect to call to testify as a
9 consultant or as an expert witness, for whom You will be submitting pre-filed
10 testimony, or whose opinions you otherwise intend to present or rely upon for the
11 Conversion Hearing or the Conversion Forums or for Your position regarding the
12 Conversion Application.

13 **RESPONSE:**

14 The Premera Watch Coalition objects to this request as vague, overbroad
15 and ambiguous, as it could be interpreted to require copies of all final reports, surveys,
16 memos, other papers on any subject prepared by or supervised by the Coalition's
17 experts at any time in their careers. Additionally, to the extent that the request seeks
18 information and documents from experts who are assisting Premera Watch Coalition
19 counsel, but who will not be testifying or otherwise participating in the conversion
20 hearing or forums, the request seeks documents that are protected by attorney-client
21 privilege and work-product doctrine.

22
23 Without waiving any objections, the Premera Watch Coalition submitted
24 final expert reports to the parties on November 10, 2003 in accordance with the
25 Insurance Commissioner's Thirteenth Order.
26

[illegible]

3
4
5
6
7
8

9

- 1
- 2

4
5
6
7
8
9
20

21

23
24
25

1 communication to and from You and each such Expert regarding the Conversion
2 Application or the Conversion Hearing or the Conversion Forums or the drafting or
3 preparation of any such report surveys, memos or other papers; and (c) any other
4 documents of any other documents regarding or related to the Conversion Application
5 or the Conversion Hearing or the Conversion Forums.

6 **RESPONSE:**

7
8 The Premera Watch Coalition objects to this request as vague, ambiguous
9 and confusing. Section (c) includes an apparent typographical error that renders the
10 request unintelligible. It appears that the request is to produce any documents relating
11 to the conversion application, conversion hearing or the conversion forums but does
12 not identify the persons from whom Premera would like the information. Since
13 Request No. 4 deals with the Premera Watch Coalition's experts at the conversion
14 hearing and forums, the Premera Watch Coalition assumes that the request is for any of
15 these documents relating to the conversion application, hearing or forums that are in
16 the possession of its Experts who will testify at the conversion hearing or forums.

17 The Premera Watch Coalition objects to this request to the extent that the
18 request seeks information and documents that are protected by attorney-client
19 privilege, work product doctrine, or any other applicable privilege. Premera Watch
20 Coalition would be willing to confer with Premera on whether detailed privilege logs
21 setting forth information about documents withheld on the basis of privilege, if any,
22 that are otherwise responsive to this request (and to similar requests served on
23 Premera) is appropriate or whether such logs are unduly burdensome. Premera Watch
24 Coalition states that it has produced all documents reflecting communications between
25 Dr. Aaron Katz and the Intervenor, other than those which constitute communications
26 with counsel, that were located by means of a reasonably diligent search. Premera

1 Watch Coalition has also produced Dr. Katz's drafts of the report submitted in this
2 matter.

3 Without waiving any objections, the Premera Watch Coalition is
4 providing responsive documents.

5 **REQUEST FOR PRODUCTION NO. 5:**

6
7 Please produce all correspondence, emails, documents or other
8 communication regarding or relating to the Conversion Application or the Conversion
9 Hearing or the Conversion Forums to and from You and: (a) any of the Intervenor, or
10 any of the other Intervenor Groups, or any of the attorneys for any of the Intervenor
11 or the other Intervenor Groups, or any of the consultants or experts for any of the
12 Intervenor or the other Intervenor Groups or their attorneys; (b) any one on the OIC
13 Staff, or (c) any one on the State of Alaska Division of Insurance staff.

14 **RESPONSE:**

15 Without waiving objections, the Premera Watch Coalition Intervenor
16 provide this Response to Request for Production No. 5 and privilege log. Request No.
17 5 seeks hundreds, if not thousands of emails, correspondence and other
18 communications and documents that are covered by the enclosed Agreement
19 Regarding Confidential Sharing of Attorney Work Product and Privileged Information,
20 signed by the representatives of Washington Citizen Action, Welfare Rights
21 Organizing Coalition, American Lung Association of Washington, Northwest
22 Federation of Community Organizations, Northwest Health Law Advocates, Service
23 Employees International Union Washington State Council, The Children's Alliance,
24 Washington Academy of Family Physicians, Washington Association of Churches,
25 Washington Protection and Advocacy System, Washington State NOW, Washington
26

1 State Medical Association, Washington State Hospital Association, Association of
2 Washington State Public Hospital Districts, Washington Association of Community
3 and Migrant Health Centers, John Garner, Anchorage Neighborhood Health Center,
4 United Way of Anchorage and University of Alaska. Communications with other
5 attorneys for the same parties are similarly protected by the attorney-client privilege,
6 common interest doctrine, work product rules, and other applicable privileges.

7
8 The Premera Watch Coalition objects to producing a privilege log of each
9 individual correspondence, email, document, or other communication as unduly
10 burdensome. The Premera Watch Coalition has instead provided a privilege log that
11 identifies by sender the groups of documents withheld.

12 The retainer agreements signed by each Intervener with its respective
13 attorney(s), and the coalition's signed statements of principles and rules of engagement
14 are privileged under the Joint Privilege agreement and attorney-client privilege. The
15 Premera Watch Coalition Interveners encourage the parties to review the Coalition's
16 website for non-privileged versions of the Statement of Principles and Rules of
17 Engagement: <http://home.covad.net/~wacitizenaction/premerawatch/>

18 All emails, correspondence, documents, or other communication between
19 the Premera Watch Coalition Interveners (Washington Citizen Action, Welfare Rights
20 Organizing Coalition, American Lung Association of Washington, Northwest
21 Federation of Community Organizations, Northwest Health Law Advocates, Service
22 Employees International Union Washington State Council, The Children's Alliance,
23 Washington Academy of Family Physicians, Washington Association of Churches,
24 Washington Protection and Advocacy System, Washington State NOW and the
25 Washington Association of Community and Migrant Health Centers), the Premera
26

1 Watch Coalition attorneys (Eleanor Hamburger, John Midgley, Rick Spoonemore,
2 David Jolley, Kurt Calia, Daniel Gross, Debbie Dorfman, David Girard, Greg
3 Montgomery and Christine Masse) and their consultants (Scott Benbow, Barbara
4 Gorham, Ebele Okobi-Harris, Michelle Jun, Laurie Sobel, Elizabeth Imholtz, all of
5 Consumers Union, Professor Sheldon Frankel, and Professor Nancy Kane), and to and
6 from other Interveners or Intervener groups (Washington State Medical Association,
7 Washington State Hospital Association, Association of Washington State Public
8 Hospital Districts, John Garner, Anchorage Neighborhood Health Center, United Way
9 of Anchorage and University of Alaska), their attorneys (Bennett, Bigelow and
10 Leedom, Taya Briley, Jeff Coopersmith, Amy McCullough, Ardith Lynch, and Jim
11 Davis) and consultants, and other attorneys for the same parties, have been withheld
12 under the Joint Privilege agreement, the work product doctrine and attorney-client
13 privilege.

14 Additionally, documents that are otherwise available or publicly filed
15 have not been provided. In particular, the responses to the OIC Staff's Request for
16 Proposals, and contracts with the OIC Staff experts that were provided to the Premera
17 Watch Coalition Interveners by the Office of the Insurance Commissioner in response a
18 public disclosure request are not provided since it is assumed that Premera already has
19 copies of those documents or may easily obtain them from the Office of the Insurance
20 Commissioner.

Date	Sender	Recipient	Subject	Privilege
January 1, 2002 to present	Counsel for intervenors	Co-counsel and counsel for other intervenors	Case planning and strategy	Joint Privilege Agreement, Work Product, Attorney-Client privilege
January 1, 2002 to present	Counsel for intervenors	Intervenors	Case Planning and strategy	Joint Privilege Agreement, Work Product, Attorney-Client privilege

Date	Sender	Recipient	Subject	Privilege
January 1, 2002 to present	Counsel for intervenors	Intervenors and other counsel for intervenors	Case Planning and strategy	Joint Privilege Agreement, Work Product, Attorney-Client privilege
January 1, 2002 to present	Counsel for Intervenors	Consultants not to be called as witnesses; such consultants and intervenors; counsel for intervenors on other matters	Case Planning and strategy	Joint Privilege Agreement, Work Product, Attorney-Client privilege
May 31, 2002 to present	Julie Chinitz, Northwest Health Law Advocates and Northwest Federation of Community Organizations	Consumers Union staff	Case planning and strategy	Joint Privilege Agreement, Work Product, Attorney-Client privilege
May 31, 2002 to present	Julie Chinitz, Northwest Health Law Advocates and Northwest Federation of Community Organizations	Certain Premera Watch Coalition Intervenors, Certain Intervenors' Attorneys, Consumers Union staff, and/or Professor Sheldon Frankel	Case planning and strategy	Joint Privilege Agreement, Work Product, Attorney-Client privilege
May 31, 2002 to present	Julie Chinitz, Northwest Health Law Advocates and Northwest Federation of Community Organizations	Eleanor Hamburger, Columbia Legal Services	Case planning and strategy	Joint Privilege Agreement, Work Product, Attorney-Client privilege

Dates	Sender	Recipients	Subject	Privilege
August 2002 to September 19, 2003	Daniel Gross, Washington Protection and Advocacy Systems	Premera Watch Coalition Interveners, Interveners Attorneys, Consumers Union Staff	Case planning and strategy, legal analysis	Joint Privilege Agreement, Work product
August, 2002 to present	Phil Jordan, Washington Protection and Advocacy Systems	Premera Watch Coalition Interveners, Interveners Attorneys, Consumers Union Staff	Case planning and strategy	Joint Privilege Agreement, Attorney-Client Privilege, Work Product
March 28, 2003	Janet Varon, Northwest Health Law Advocates	Eleanor Hamburger, Julie Chinitz, Northwest Federation of Community Organizations	Case Planning and Strategy	Joint Privilege Agreement, Attorney-Client privilege, Work Product doctrine
July 9, 2003	Janet Varon, Northwest Health Law Advocates	Eleanor Hamburger, Columbia Legal Services	Case planning and strategy	Joint Privilege Agreement, Attorney-Client privilege, Work Product Doctrine
August 13, 2003	Janet Varon, Northwest Health Law Advocates	Eleanor Hamburger, Elisabeth Tutsch Columbia Legal Services	Case planning and strategy	Joint Privilege Agreement, Attorney-Client privilege, Work Product Doctrine

Date	Sender	Recipient	Subject	Privilege
June, 2003 to the present	Nancy Chupp, Gwynne Skinner, Public Interest Law Group	Adair Dammann, SEIU – WA State Council, Ralph Hill, WA Association of Community and Migrant Health Centers; Barbara Barron Flye, Kyle Tanner, Washington Citizen Action, Robert Crittenden, Washington Academy of Family Physicians, Intervenor's Attorneys	Case planning and strategy	Attorney-Client privilege, Work Product Doctrine
September 2002 to May 22, 2003	Greg Montgomery and Christina Masse, Miller Nash, LLP	Ralph Hill, WA Association of Community and Migrant Health Centers	Case planning and strategy	Attorney-Client Privilege, Work Product Doctrine
May 31, 2002 to the present	Barbara Barron Flye, Washington Citizen Action	Premera Watch Coalition Intervenor's, Other Intervenor's, Intervenor's attorneys, Consumers Union staff, Washington Citizen Action staff	Case planning and strategy	Joint privilege agreement, attorney-client privilege, work product doctrine

Dates	Sender	Recipients	Subject	Privilege
June, 2003 to the present	Barbara Barron Flye, Washington Citizen Action	Nancy Chupp, Gwynne Skinner, Public Interest Law Group; Adair Dammann, SEIU – WA State Council, Ralph Hill, WA Association of Community and Migrant Health Centers; Kyle Tanner, Washington Citizen Action, Robert Crittenden, Washington Academy of Family Physicians	Case planning and strategy	attorney-client privilege, work product doctrine
December 2002 to the present	Kyle Tanner	Premera Watch Coalition Interveners, other Interveners, Attorneys, Consumers Union staff	Case planning and strategy	Joint privilege agreement, attorney-client privilege
March 21, 2003	Taya Briley and Claudia Saunders, Association of Washington Public Hospital Districts, Washington State Hospital Association	Barbara Barron Flye, Washington Citizen Action	Case planning and strategy	Joint privilege agreement, attorney-client privilege

1 **REQUEST FOR PRODUCTION NO. 6:**

2

3 As set forth in the Commissioner's Fourth Order, Premera Watch

4 Coalition was to "provide expert opinion on the impact of the conversion on health

5 care generally."

6 Please produce all documents—other than those produced by Premera to

7 the OIC Staff --in Your possession or under Your control that constitute, reflect or

8 refer to "the impact of Premera's proposed conversion on health care."

9

10 The documents to be produced should include, but not be limited to, all

11 those regarding the future of health care, whether or not Premera is authorized to

12 convert (e.g., comparisons of future health care if Premera converts and if it does not).

13 **RESPONSE:**

14 The Premera Watch Coalition objects as vague, overbroad and unduly

15 burdensome, since it requests all documents in the possession of the Coalition

16 members "regarding the future of health care." To the extent that the request seeks

17 information and documents that are protected by attorney-client privilege or work

18 product doctrine, the Premera Watch Coalition objects. Without waiving any

19 objections, the Premera Watch Coalition response is provided.

20

21

22

23

24

25

26

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6

RESPONSES DATED this 20th day of November, 2003.

By: /s/

Richard E. Spoonemore, WSBA #21833

Attorney for Interveners Washington
Citizen Action, American Lung
Association of Washington, Northwest
Federation of Community Organizations,
Northwest Health Law Advocates, Service
Employees International Union
Washington State Council, The Children's
Alliance, Washington Academy of Family
Physicians, Washington Association of
Churches and Washington State NOW
Washington Association of Community
and Migrant Health Centers, Washington
Protection and Advocacy System

On behalf of all Intervener Groups.